

A UNITED PLANTATION BHD

v.

PENGARAH HOSPITAL TELUK INTAN & ORS &
ANOTHER APPLICATION

B HIGH COURT MALAYA, KUALA LUMPUR
LAU BEE LAN J
[JUDICIAL REVIEW NOS: R1-25-38-05 & R1-25-37-05]
6 NOVEMBER 2009

C **LABOUR LAW:** *Estate workers - Treatment in government hospital - Charges - Applicable rate - Whether there is distinction between foreign and local workers - Whether 'Notification of Maintenance and Treatment for Estate Workers and Their Dependants 1995' applies - Whether Fees (Medical) (Amendment) Order 2003 applies - Workers' Minimum Standards of Housing and Amenities Act 1990*

D **STATUTORY INTERPRETATION:** *Canons of construction - Generalia specialibus non derogant - Specific provision enacted after general provision - Workers' Minimum Standards of Housing and Amenities Act 1990 - Notification of Maintenance and Treatment for Estate Workers and Their Dependants 1995 - Fees Act 1951 - Fees (Medical) (Amendment) Order 2003*

E These were two applications (heard together) for declarations that: foreign estate-workers come within the ambit of s. 17 of the Workers' Minimum Standards of Housing and Amenities Act 1990 ('the 1990 Act') and that they are exempted from the purview of para. 8A of the Fees (Medical) (Amendment) Order 2003 ('the 2003 order'). The declarations were sought by the respective applicants herein as they were aggrieved by the medical bills of their foreign estate-workers as submitted by the respondents. The respondents had decided to base their charges on the rates prescribed under the 2003 order. The applicants, on the other hand, contended that the medical charges should have been made in accordance with the Notification of Maintenance and Treatment for Estate Workers and Their Dependants 1995 ('the 1995 notification').

H The issue central to the disposal of the applications herein was whether there already is in existence legislation on charges for the medical treatment of estate workers - such that foreign estate-workers come within the ambit of s. 17 of the 1990 Act and are, therefore, exempted from the purview of the 2003 Order.

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Held (allowing the applications):

- (1) Under s. 17(1) of the 1990 Act, it is clear that in respect of estate workers who are at the time of admission to a government hospital employed and residing on an estate, it is the employer who shall pay the expenses for their treatment at such rate as the minister of human resources ('the Minister') may from time to time prescribe by notification in the gazette. Pursuant to the 1995 Notification, the Minister has prescribed the rate of RM3 per day as the charge for treatment in any government hospital for each estate worker, irrespective of whether he is a foreign or local estate-worker. (para 8)
- (2) Estate workers and their dependants are also clearly excluded from the purview of the old Fees (Medical) Order 1982 ('the 1982 Order') as their 'medical privileges' have been provided for in 'other written law', namely the 1990 Act, in particularly the 1995 Notification. This exclusion is further reinforced by s. 9 of the Fees Act 1951 ('the 1951 Act'). (para 8).
- (3) Under the 1990 Act, a 'worker' means an employee as defined in the First Schedule to the Employment Act 1955. The First Schedule of the Employment Act 1955 makes no distinction as between employees of foreign or of local origin. (para 8)
- (4) With respect to the matter on medical charges for the treatment of estate workers in government hospitals, it would appear that the 1951 Act and the orders made there under (ie, the 1982 Order and the 2003 Order) are general provisions, whereas the 1990 Act and the orders made there under (eg, the 1995 Notification) are specific provisions. Applying the maxim *generalia specialibus non derogant*, the 1995 Notification must prevail. (para 10)
- (5) The respondents were therefore wrong to have applied the rates/charges under the 2003 Order. (paras 11 & 12)

[Order in terms.]

Legislation referred to:

Fees Act 1951, ss. 3, 9, 10

Rules of the High Court 1980, O. 53 r. 3(2)

Workers' Minimum Standards of Housing and Amenities Act 1990, s. 17(1)

Other source(s) referred to:

NS Bindra, *Interpretation of Statutes*, 8th edn, pp. 150-151

A *For the applicants - Suganthi Singam; M/s Shearn Delamore & Co*
For the respondents - Suhaila Haron SFC

Reported by Gan Peng Chiang

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JUDGMENT

Lau Bee Lan J:

C [1] There are two judicial review applications, R1-25-38-05 and R1-25-37-05. The applicants in the respective applications have obtained leave of the court on 12 September 2005 to move the court for a declaration that the foreign estate workers are within the purview of s. 17 of the Workers' Minimum Standards of Housing and Amenities Act 1990 ("the Act") and foreign estate workers are exempted from the purview of para. 8A of the Fees (Medical) Order 2003. Parties have agreed that the decision in R1-25-38-05 will bind R1-25-37-05 as the issues involved are the same. The court granted O.I.T of the declaration that the applicants sought with costs and hence this appeal by the respective respondents in both judicial review applications.

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[2] The cause papers involved in the applicant's application (R1-25-38-05) are:

(i) The applicant:

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(a) Application for judicial review dated 2 March 2005 (encl. 1).

(b) Statement pursuant to O. 53 r. 3(2) of the RHC dated 2 March 2005 (encl. 2).

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(c) Affidavit of Abdul Rashid bin Sahibjan affirmed on 28 February 2005 (encl. 3).

(d) Affidavit of Cheriachangel Mathews affirmed on 28 February 2005 (encl. 4).

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(e) Affidavit in reply affirmed on 14 February 2009 (encl. 29).

(ii) The respondents:

(a) Affidavit in reply of Haji Mohd Dusuki bin Haji Yaacob affirmed on 31 December 2008 (encl. 28).

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The cause papers involved in the applicant's application (R1-25-37-05) are: **A**

(i) The applicant:

(a) Application for judicial review dated 1 March 2005 (encl. 1). **B**

(b) Statement pursuant to O. 53 r. 3(2) of the RHC dated 1 March 2005 (encl. 2).

(c) Affidavit of Zainalabidin bin Hashim affirmed on 28 February 2005 (encl. 3). **C**

(d) Affidavit of Abdul Khalif bin Mohammad Salleh affirmed on 24 February 2009 (encl. 23).

The respondents

(a) Affidavit in reply of Haji Mohd. Dusuki bin Haji Yaacob affirmed on 31 December 2008 (encl. 28). **D**

[3] By way of background, employers are statutorily obligated to provide minimum standards of housing and amenities which includes among others accommodation, sanitation, health to its estate workers/employees (foreign and local) in accordance with the Act. For the facts leading to both these applications it suffices to refer to the facts contained in the respondents' submission. In R1-25-37-05, the 1st respondent (Pengaroh Hospital Dungun) had issued a hospital bill dated 30 December 2004 for in-patient charges of medical treatment of the applicants' foreign workers. In R1-125-38-05, the 1st respondent (Pengaroh Hospital Teluk Intan), 2nd respondent (Pengaroh Hospital Kuala Lumpur) and 3rd respondent (Pengaroh Hospital Tengku Ampuan Rahimah), each had issued hospital bills, respectively dated 11 December 2004, 16 September 2004 and 14 December 2004, for inpatient charges of medical treatment for the applicants' foreign workers. Upon receipt of hospital bills dated 30 December 2004, 11 December 2004, 16 September 2004 and 14 December 2004 from the respective respondents, the applicants disputed the amount charged for medical treatment and inpatient charges of the applicants' foreign workers and contend that the rate of the medical charges should be RM3 per day as provided in the Notification of Maintenance and Treatment For Estate Workers and Their Dependents 1995 [PU(B) 204/1995]. The respective respondents had replied to the applicants, in their respective letters dated 3 February 2005, 26 January 2005, 28 January 2005 and 2 February 2005, to explain that as **E**
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- A** government hospital directors, they were bound to follow the Health Ministry's Circular Bil. 3 Tahun 2003 and Ministry's letter dated 23 June 2003 had instructed that the rates to be paid by a foreign person in any government hospital are the rates as prescribed under the Fees (Medical) (Amendment) Order 2003 [P.U(A) 6/2003]. The
- B** applicants were dissatisfied with the explanations in the respective letters dated 3 February 2005, 26 January 2005, 28 January 2005 and 2 February 2005, and the applicants filed applications for judicial review on the alleged decisions by the respective hospital directors.

C Applicant's Contention

- [4]** It is the contention of the applicant that the Act does not make any distinction between patients of foreign or local estate workers. Under the Act a worker is defined as "an employee as defined in the First Schedule of the Employment Act 1955 and includes his dependents". The First Schedule of the Employment Act sets out the categories of employees who fall within the ambit of Employment Act 1955 which makes no distinction between employees of foreign or local origins.
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- E** (a) The applicant also contended that the Fees (Medical) (Amendment) Order 2003 is not applicable to those under the Act namely patients of foreign estate workers which is separate and distinct altogether. The amendment of the former is intended for those where there is no specific legislation to cater
- F** for their needs eg, foreign factory workers, domestic help etc.
- (b) Both the Fees Act and Fees (Medical) Order 1982 P.U.(A) 359 are consistent in that estate workers both foreign and local are meant to be excluded since they are encompassed under the Act.
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- (c) The exclusion clause contained in the Fees (Medical) Order 1982 P.U.(A) 359 ie, that the said order shall not apply to "(c) persons whose medical privileges are provided for in any written law" and s. 9 of the Fees Act 1951 ("the Fees Act") provides
- H** an exclusion of the category of estate workers irrespective whether foreign or local.

Respondents' Contention

- I** **[5]** The respondents' contended that in light of the preamble of the Act it is submitted that there is no authorisation in the Act that the Minister for Human Resource may restrict or limit the 4th respondent's power in the imposition and collection of medical

charges from foreign persons seeking treatment in the government hospitals which includes the applicant's foreign workers. As such, foreign estate workers are not exempted from the purview of para. 8A of the Fees (Medical) (Amendment) Order 2003.

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(a) The respondents further submitted that the applicant's foreign estate workers are within the purview of s. 17 of the said Act and therefore are subjected to the rate provided under the Notification P.U.(B) 204/1995. It is the submission of the respondents that nothing in the sections or provisions of P.U. (B) 204/1995 can be construed as empowering the Minister under the Act to impose rate for matters not incidental under the Act. The respondents maintained that the provision under the Act and P.U.(B) 204/1995 should be read in line with the Act.

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[6] The court has considered the written submissions of the learned counsel for the applicant (encls. 18 and 31), the learned SFC for the respondents (encls. 22) and the authorities and the court's findings include the following.

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Decision

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[7] The pivotal issue in this application is whether there is existing legislation already providing for the charges levied for treatment of estate workers and as a consequence whether the foreign estate workers are within the purview of s. 17 of the Act and as such are exempted from the purview of para. 8A of the Fees (Medical) (Amendment) Order 2003.

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[8] Section 17 of the Act provides:

17. (1) If a worker at the time of his admission to a Government hospital was employed and residing on any estate **the employer shall pay the expenses of maintenance and treatment in such hospital of such worker and of any dependant of such worker at such rate as the Minister may, from time to time, prescribe by notification in the Gazette.**

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(2) **The expenses incurred under subsection (1) shall, whatever be the amount, be recoverable from the employer in a Civil Court at the suit of the Medical Officer in charge of such hospital,** and the certificate of such Medical Officer shall be sufficient *prima facie* evidence that the amount therein specified is due from the employer.

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(3) No expenses paid by an employer under subsection (1) shall be recoverable from any worker.

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(Emphasis added)

- A (a) From a plain reading of s. 17(1) of the Act, it is clear that in respect of estate workers, who are at the time of admission to a government hospital were employed and residing on any estate, it is the employer who shall pay the expenses of his maintenance and treatment including his dependant at such rate
- B which the Minister of Human Resources may from time to time prescribe by notification in the Gazette. Pursuant to s. 17(1) of the Act, *vide* the Notification of Maintenance and Treatment For Estates Workers and Their Dependants 1995 P.U.(B) 204 dated 27 April 1995 the Minister of Human
- C Resources prescribed the rate of RM3 per day for the expenses of maintenance and treatment in any government hospital for each estate worker and his dependant irrespective of whether foreign or local estate workers.
- D (b) In addition to the above, under a separate legislation, pursuant to ss. 3 and 10 of the Fees Act 1951 the Yang di-Pertuan Agong (and not the Minister of Health as the respondents seem to suggest), the Fees (Medical) Order 1982 - P.U.(A) 359/1982 was enacted. Of particular significance is paragraph 1 which reads:
- E 1. (1) This Order may be cited as the **Fees (Medical) Order 1982** and shall come into force on the 1st December 1982.
- (2) This Order shall apply to West Malaysia only.
- (3) **This Order shall not apply to:**
- F (a) Government servants, Government pensioners and members of their families;
- (b) employees of local authorities, statutory bodies and members of their families; and
- G (c) **persons whose medical privileges are provided for in any other written law.**
- (Emphasis added)
- H (c) By virtue of the aforesaid paragraph, it means the estate workers and their dependants are excluded from the ambit of the Fees (Medical) Order 1982 as their “medical privileges” are provided for in the Act (“the other written law”), particularly the Notification of Maintenance and Treatment For Estates Workers and Their Dependants 1995 P.U.(B) 204/1995.
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(d) The exclusion accorded to the estate workers and their dependants can be further seen in s. 9 of the Fees Act which provides: A

9. Nothing in this Act shall be held to affect the amount of any such fees or payments leviable or chargeable or to be leviable or chargeable under any written law when express provision is made as to the amount of such fees or payments in such written law. B

(e) Under the Act a “worker” is defined as “an employee as defined in the First Schedule of the Employment Act 1955 and included his dependants.”; it is of significance that the First Schedule of the Employment Act which sets out the categories of employees who fall within the scope of the Employment Act makes no distinction between employees of foreign or local origin. C

[9] In 2003, the Fees (Medical) Order 1982 - P.U.(A) 359/1982 was amended *vide* the Fees (Medical) (Amendment) Order 2003 P.U.(A) 6/2003 enhancing in-patient charges and other charges as specified in para. 8A read with the relevant Schedules and amending “foreign person” to mean “a person who is not a citizen of Malaysia but does not include: D

(a) a non-citizen who holds an identity card issued under paragraph 5(3)(b) of the National Registration Regulations 1990; or E

(b) a non-citizen spouse to a citizen of Malaysia. F

[10] Premised on the reasoning above, I am of the view that the contentions of the respondents as alluded to above have no merit. Even if it can be argued that the respondents’ contention is correct (which I do not agree) to the extent that the power to impose the rate of charges for foreign estate workers and their dependants lies with the Minister of Health (it is the YDPA and not the Minister of Health) and that the power of the Minister of Human Resources *vide* the Notification of Maintenance and Treatment For Estates Workers and Their Dependants 1995 P.U.(B) 204/1995 relates only to the amount and the rate of medical cost/expenses to be borne by the employers, in my judgment, this conflict can be rationalised by the principle of *generalia specialibus non derogant* (general words do not derogate from special provisions, or, special provisions will control general provisions). It is the 2nd situation that we are concerned with here. G

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- A (a) At p. 150-151 of N.S. Bindra's *Interpretation of Statutes* Eighth Edn. the learned author said "If the special Act is made after the general Act, the position is simpler. Having made the general Act if the legislature afterwards makes a special Act in conflict with it, we must assume that the Legislature had in mind its own general Act when it made the special Act and made the special Act which is in conflict with general Act, as an exception to the general Act."
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(Emphasis added)

- C (b) Applying to the factual matrix of this instant case, in my view "the general Act" is the Fees Act and the Orders made under it and the "special Act" is the Act and the Orders made under it. Clearly, the appropriate exception or exclusion has been made for foreign estate workers and their dependants as evident from s. 9 of the Fees Act and the Fees (Medical) Order 1982 P.U.(A) 359/1982.
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- [11] For the foregoing reasons I find that the Respondents have erred and misconstrued in interpreting s. 17 of the Act and as a consequence, I accordingly find that the application of the rates imposed by the respondents under the Fees (Medical) (Amendment) Order 2003 [P.U.(A) 6/2003] would be erroneous.
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- [12] In the circumstances I granted O.I.T of the applicant's application for a declaration that the foreign estate workers are within the purview of s. 17 of the Act and they are exempted from the purview of para. 8A of the Fees (Medical) (Amendment) Order 2003 with costs.
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